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# FEDERAL ENERGY REGULATORY COMMISSION

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## NEWS RELEASE

### NEWS MEDIA CONTACT:

Celeste Miller  
(202) 502-8680

### FOR IMMEDIATE RELEASE

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4166-011, and PL02-8-000

### **COMMISSION REVISES INTERIM GENERATION MARKET POWER SCREEN AND MITIGATION POLICY; SEEKS PUBLIC INPUT ON FUTURE MARKET POWER RULEMAKING**

The Federal Energy Regulatory Commission today adopted two new market power screens to assess generation market power and modified measures to mitigate market power where it is found. The screens will apply to all initial market-based rate applications and triennial reviews on an interim basis.

Today's action responds to rehearing requests on the Commission's Supply Margin Assessment (SMA) order issued in November 2001. In developing a decision in this case, the Commission solicited several rounds of comments on its proposal, conducted a two-day technical conference to gather information from the industry and issued a staff paper to solicit feedback on various options on the issues.

The Commission said in its decision that it would "adopt a policy that provides applicants with a number of procedural options, several types of generation dominance tests, and the option of proposing mitigation tailored to the particular circumstances of the applicant."

More specifically, the Commission adopted two market power analyses instead of the one proposed in the SMA order. Both screens will be indicative, not definitive, as to whether or not there is generation market power.

The first screen will be a pivotal supplier analysis based on a control area's annual peak demand, and the second screen will focus on a market share analysis applied on a

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seasonal basis. Both screens will consider native load obligations, operating reserve requirements and other commitments of the applicant.

If applicants pass both screens, it will be presumed that generation market power does not exist; however, the Commission will allow intervenors an opportunity to present evidence to rebut this presumption. When an applicant fails either screen, there will be a presumption that generation market power exists and the applicant would have the opportunity to supplement their market power study to show otherwise.

With regard to mitigation policy, the Commission will allow applicants to propose their own case-specific mitigation plans. Examples of mitigation plans could include cost-based rates or other mitigation that eliminates an applicant's ability to exercise market power.

In addition, default mitigation is being adopted in the event that the applicant chooses not to develop a plan. The Commission said that: "Applicants that have a presumption of market power will have their rates prospectively made subject to refund, pending a definitive finding of market power provided that the applicant chooses to submit additional evidence of the lack of market power. If the applicant does not pass the generation market power screens, or forgoes the screens entirely, such 'default' rates will be applicable unless the Commission approves different mitigation for the applicant based on case-specific circumstances." The Commission further stated that an applicant's market-based rate authority would be revoked in geographic areas where market power was found, subjecting the applicant to cost-based rates.

The default cost-based rates adopted are as follows: (1) sales of power of one week or less are priced at the applicant's incremental cost plus a 10 percent adder; (2) sales of power of more than one week but less than one year are priced at an embedded cost "up to" rate reflecting the costs of the unit providing service; and (3) sales of power for more than one year are priced on an embedded cost-of-service basis, with each contract filed with the Commission for review.

Today's rehearing order, the Commission noted, does not make any decision in connection with the triennial market-based rate review filings of AEP, Entergy, and Southern Companies. These companies were the subject of the original SMA order in November 2001. The order says that each company has 60 days from the date of order to file generation dominance analyses based on the two indicative screens.

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In a separate order, the Commission is seeking comments on the adequacy of its current four-prong analysis to assess whether an applicant should be granted market-based rate authority. In addition, a technical conference will be held on June 9, 2004 at the Commission's headquarters to frame the issues that will comprise the rulemaking proceeding. The four prongs are: generation market power, transmission market power, barriers to entry and affiliated company issues. The technical conference will include a discussion of how all four parts of the current test interrelate, as well as other factors the Commission should consider in granting market-based rate authorizations.

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